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Honorable Christopher M. Alston  
Chapter 11  
Hearing Location: Rm. 7206  
Hearing Date: Friday, April 20, 2018  
Hearing Time: 9:30 a.m.  
Response Date: April 13, 2018

8 UNITED STATES BANKRUPTCY COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 In re:  
11 NORTHWEST TERRITORIAL MINT, LLC,  
12 Debtor.  
13

Case No. 16-11767-CMA  
MOTION FOR ORDER APPROVING THE  
SALE OF CERTAIN OF THE DEBTOR'S  
COINING DIES AND INVENTORY TO BOY  
SCOUTS OF AMERICA

14 **I. INTRODUCTION**

15 Mark Calvert (the "Trustee"), Chapter 11 Trustee for Northwest Territorial Mint, LLC  
16 ("NWTM" or the "Debtor"), submits this Motion, which requests entry of an order approving the  
17 sale of certain Medallic Art Company LLC ("Medallic") coining dies and inventory to Boy Scouts of  
18 America ("BSA") free and clear of all liens, claims, interests, and encumbrances. BSA was a  
19 customer of the Debtor. The items the Trustee seeks to sell to BSA are medallions, coining dies, and  
20 awards that the bear the marks of BSA. Approval of the sale will generate \$30,000 in sale proceeds  
21 for the benefit of the estate, and resolve any claims that BSA may have with respect to (i) the  
22 ownership of the property being sold; and (ii) the right of the Trustee to sell such property to third  
23 parties given that it contains the marks of BSA. As described in more detail below, approval of the  
24 sale to BSA is in the best interests of the estate and should be approved by the Court.  
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OF THE DEBTOR'S COINING DIES AND INVENTORY  
TO BOY SCOUTS OF AMERICA.- 1

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2 **II. BACKGROUND**

3 On April 1, 2016, the Debtor commenced this case by filing a voluntary petition under  
4 chapter 11 of the United States Bankruptcy Code. On April 11, 2016, the Court appointed Mark  
5 Calvert as chapter 11 Trustee. *See* Dkt. No. 51.

6 The Trustee's goal in this case has been to maximize the recovery of creditors. Since  
7 May 2017, the Trustee has engaged in marketing efforts related to a potential sale of the business.  
8 The Trustee entertained expressions of interest from multiple parties including offers to purchase the  
9 assets of the estate on a going concern basis and for substantially all of the assets of the estate, but no  
10 concrete offer materialized for such a sale on terms which provided any meaningful return to the  
11 estate. Because no concrete offer materialized, and because of the inadequate cash resources  
12 available to the Trustee, the Trustee closed the Debtor's custom minting business on December 29,  
13 2017 and prepared to liquidate the assets of the estate via auction.

14 The Trustee sought authority to sell substantially all of the Debtor's assets at auction. While  
15 the Trustee prepared to sell the Debtor's assets at auction, he engaged in negotiations with multiple  
16 buyers for various aspects of the Debtor's assets. Ultimately, the Trustee separately reached  
17 agreements with Industrial Assets Corp. and Medalcraft Mint, Inc. for the purchase and sale of  
18 certain assets of the Debtor. The Industrial Assets Corp. sale was approved by this Court on March  
19 9, 2018. The Medalcraft sale, which contemplates the sale of certain company-owned coining dies,  
20 has not yet been approved.

21 BSA has filed pleadings in this case whereby it has asserted that the Debtor's inventory  
22 includes coins, medallions and knives bearing the marks, emblems, and logos of BSA. *See* Dkt. No.  
23 1369, 1395. BSA has also asserted that the Debtor entered into certain agreements with the BSA  
24 regarding the use of the marks by the Debtor and the sale of merchandise to BSA at a fixed price.  
25 According to BSA, the Debtor does not have its permission to sell or distribute certain inventory on  
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1 hand. BSA has also argued that it owns the physical coining dies that the Debtor used to make  
2 products for BSA. *See* Dkt. No. 1484.

3 The Trustee has entered into an Asset Purchase Agreement with BSA (“Boy Scouts APA”).  
4 The Boy Scouts APA was the result of arms-length negotiations between the Trustee and BSA. A  
5 copy of the Boy Scouts APA is attached as Exhibit A to the Declaration of Mark Calvert filed in  
6 support of this Motion. The Boy Scouts APA provides that Boy Scouts will purchase certain  
7 medallions, awards, coining dies, and knives bearing the marks of BSA and identified in more detail  
8 on Schedule 2.1.2 of the Boy Scouts APA (the “Boy Scouts Assets”). The Boy Scouts APA provides  
9 for a purchase price of \$30,000. BSA will be responsible for payment of costs associated with the  
10 shipping of the Boy Scouts Assets and any applicable sales tax.

11 The Trustee believes that the Boy Scouts’ offer is on reasonable terms. If the Trustee does  
12 not sell the Boy Scouts Assets to BSA, he will be forced to sell them at auction, or to a third party.  
13 The proposed sale to BSA guarantees a certain return for the estate, and avoids the cost of an  
14 auctioneer. Importantly, if the Trustee were to sell to a third party, the Trustee would be forced to  
15 resolve, perhaps through litigation, the objections of BSA and their claim to ownership of some or  
16 all of the Boy Scouts Assets.

17 Based on the Trustee’s experience in marketing coining dies, medallions, and the Debtor’s  
18 inventory for sale, the Trustee believes that the price offered for the Boy Scouts Assets is reasonable.  
19 The Trustee believes that it is in the best interests of the estate to consummate the sale to BSA. The  
20 Trustee seeks to sell the Boy Scouts Assets free and clear of liens and encumbrances. The Trustee is  
21 unaware of any parties, other than the Boy Scouts, who assert an interest in the Boy Scouts Assets.

### 22 **III. EVIDENCE RELIED UPON**

23 This Motion relies on the arguments set forth herein, the Declarations of Trustee Mark  
24 Calvert filed in support of this Motion, the pleadings and records on file in this case, and the  
25 arguments of counsel, if any.  
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#### IV. ARGUMENT

The Court should approve the Trustee's proposed sale of the Boy Scouts Assets, free and clear of liens, claims, interests, and encumbrances, pursuant to the terms of the Boy Scouts APA. Section 363(b) of the Bankruptcy Code provides that the Trustee is authorized to sell assets outside the ordinary course of its business. While the text of the Bankruptcy Code does not provide the standard for determining when it is appropriate for a court to authorize the sale of property of the estate, courts often approve a proposed sale if such sale is based upon the sound business judgment of the debtor. *See, e.g., Meyers v. Martin (In re Martin)*, 9 F.3d 389, 395 (3d Cir. 1996); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983).

##### A. The Proposed Sale Meets the Requirements for a Sale Under 363(b).

Here, a sound business reason exists for the proposed sale to BSA. Namely, the objective of the Trustee's proposed sale is to maximize the proceeds of such sale for the benefit of the bankruptcy estate. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (stating that in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"); *In re Integrated Res, Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) ("It is a well-established principle of bankruptcy law that the objective of bankruptcy rules and the [Debtor's] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.") (alteration in original) (quoting *In re Atlanta Packaging Products, Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)). The Trustee has closed the Debtor's operations and proposes the sale to BSA with an aim to maximize the recovery for the benefit of the estate.

The sale of assets outside of the ordinary course of business may be conducted by a public sale, or a private sale under appropriate circumstances. *See In re Bakalis*, 220 B.R. 525, 531 (Bankr. E.D.N.Y. 1998) ("Unlike judicial sales under the former Bankruptcy Act, the sale of estate property under the Bankruptcy Code is conducted by a trustee, who has ample discretion . . . to conduct public or private sales of estate property.") (internal quotations and citation omitted). Here, the

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1 Trustee proposes to sell the assets to BSA in a private sale. The proposed sale to BSA is fair, and on  
2 reasonable terms. The Trustee does not believe he could obtain a higher and better offer for the Boy  
3 Scouts Assets within a reasonable period of time. Here, the sale to BSA has the additional value of  
4 resolving all claims by BSA to the Boy Scouts Assets, which the Trustee would be forced to resolve  
5 if he were to sell to a third party.

6 For purposes of 11 U.S.C. § 363(m), a “good faith purchaser” is one who buys “in good  
7 faith” and “for value.” *Ewell v. Diebert (In re Ewell)*, 958 F.2d 276, 281 (9th Cir. 1992). “The  
8 requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course  
9 of the sale proceedings.” *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147 (3d Cir.  
10 1992) (quotations omitted). The “lack of good faith is shown by ‘fraud, collusion between the  
11 purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other  
12 bidders.’” *In re Ewell*, 958 F.2d at 281 (quoting *Community Thrift & Loan v. Suchy (In re Suchy)*,  
13 786 F.2d 900, 902 (9th Cir. 1985)); *see also In re Abbotts Dairies*, 788 F.2d at 147.

14 Here, the Boy Scouts APA is the result of arm’s length negotiations between the Trustee and  
15 BSA. It is not the result of any fraud or collusion between the Trustee and BSA or between the  
16 Debtor and BSA. BSA is therefore a good-faith buyer within the meaning of 11 U.S.C. § 363(m).  
17 The proposed purchase price of \$30,000, is fair and reasonable, and represents the highest and best  
18 offer the Trustee can obtain for the Boy Scouts Assets.

19 **B. Good Cause Exists to Waive the Stay Under Fed. R. Bankr. P. 6004(h).**

20 Pursuant to Fed. R. Bankr. P. 6004(h), any order authorizing the use, sale, or lease of  
21 property other than cash collateral is stayed for 14 days, unless the court orders otherwise. Given the  
22 liquidity concerns facing the Debtor’s estate, and the necessity that this sale close quickly, cause  
23 exists to waive the stay and permit the Trustee to quickly consummate the proposed sale to BSA.

24 **C. The Proposed Sale Satisfies the Requirements of 11 U.S.C. § 363(f).**

25 Pursuant to 11 U.S.C. § 363(f), a Trustee may sell property of the estate under 11 U.S.C. §  
26 363(b) free and clear of any interest in such property of any entity other than the estate only if (1)

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1 applicable non-bankruptcy law permits sale of such property free and clear of such interest; (2) such  
2 entity consents; (3) such interest is a lien and the price at which the property is to be sold is greater  
3 than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; *or* (5)  
4 such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of  
5 such interest. 11 U.S.C. § 363(f) (emphasis added).

6 Here, the Trustee is not aware of any entities that claim a lien on, or interest in, any of the  
7 Boy Scouts Assets (other than BSA). The Trustee will provide notice of this Motion to the entire  
8 mailing matrix, so that if any entity claims a lien on the assets being sold, they will have an  
9 opportunity to object. If no such creditor objects, the sale free and clear will be permitted under 11  
10 U.S.C. § 363(f)(2). Moreover, even if alleged secured creditors object to the sale, the sale free and  
11 clear is permissible under 11 U.S.C. § 363(f)(5) because there are legal and equitable proceedings in  
12 which a lienholder could be compelled to accept a money satisfaction of such lien, including the  
13 disposition of collateral under the default remedies provided in Washington's Uniform Commercial  
14 Code (Chapter 62A.9A RCW) or in a receivership proceeding pursuant to RCW 7.60.260.

## 15 V. CONCLUSION

16 For the foregoing reasons, the Trustee respectfully requests that the Court enter an order in  
17 the form proposed by the Trustee, granting the Motion, authorizing his proposed sale to BSA, and  
18 for such other relief as the Court deems appropriate under the circumstances.

19 DATED this 26th day of March, 2018.

20 K&L GATES LLP

21 By /s/ David C. Neu

22 Michael J. Gearin, WSBA #20982

23 David C. Neu, WSBA #33143

24 Brian T. Peterson, WSBA #42088

25 Attorneys for Mark Calvert, Chapter 11 Trustee

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**CERTIFICATE OF SERVICE**

The undersigned declares as follows:

That she is a Paralegal in the law firm of K&L Gates LLP, and on March 26, 2018, she caused the foregoing document to be filed electronically through the CM/ECF system which caused Registered Participants to be served by electronic means, as fully reflected on the Notice of Electronic Filing.

Also on March 26, 2018, she caused the foregoing document to be deposited in the U.S. mail to the Party at the address listed below:

Northwest Territorial Mint LLC  
c/o Ross Hansen, Member  
P.O. Box 2148  
Auburn, WA 98071-2148

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Executed on the 26th day of March, 2018 at Seattle, Washington.

/s/ Denise A. Lentz  
Denise A. Lentz

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